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October 10, 2003
DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: May 8, 2003

Case Number: TSO-0050

This Decision concerns the eligibility of XXXXX (hereinafter referred to as "the individual") to hold an access authorization (also called a security clearance). The local DOE security office determined that information in its possession created substantial doubt about the individual's eligibility for an access authorization under the Department of Energy (DOE) regulations set forth at 10 CFR Part 710, Subpart A, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the individual's suspended access authorization should be restored. As explained below, I have concluded that the individual should not be granted access authorization.

Background

The individual is employed by a contractor at a DOE facility, and was hired for work that requires an access authorization. The DOE issued a Notification Letter to the individual on February 19, 2003. The Notification Letter alleges that DOE has substantial doubt about the individual's eligibility for a clearance, based upon disqualifying criteria set forth in Section 710.8, paragraph (h).

The Notification Letter states under Criterion H that the individual has an illness or mental condition of a nature which in the opinion of a psychiatrist causes or may cause a significant defect in his judgment or reliability. The DOE had conducted a Personnel Security Interview (PSI) in January 2002 with the individual, who was then evaluated by a DOE consultant psychiatrist. The psychiatrist diagnosed the individual as having a history of significant problems with controlling his impulses, i.e. gambling and sexual addiction. The psychiatrist also stated that the individual's sexual addiction was continuing. In his report dated December 24, 2002 (the Report), the DOE psychiatrist opined that the individual currently meets the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV TR) criteria for Impulse Control Disorder Not Otherwise Specified (312.30). On the basis of his evaluation and this diagnosis, the psychiatrist opined that the individual has an illness or mental condition which causes or may cause a significant defect in his judgment and responsibility.

The types of impulse control disorders set forth in the DSM-IV TR manual include kleptomania, pyromania, pathological gambling, and trichotillomania (recurrent pulling out of one's hair, resulting in noticeable hair loss). According to the manual, "The essential feature of Impulse-Control Disorders is the failure to resist an impulse, drive, or temptation to perform an act that is harmful to the person or to others."

Because of this security concern, the case was referred for administrative review. The individual filed a request for a hearing on the concern stated in the Notification Letter. DOE transmitted the individual's hearing request to the Office of Hearings and Appeals (OHA), and I was appointed the Hearing Officer in this case.

At the hearing which I convened, the DOE Counsel called two witnesses: a personnel security specialist and the DOE consultant psychiatrist. The individual, who was not represented by counsel, testified on his own behalf, and called one other witness, a fellow member of the local chapter of Gamblers Anonymous. The DOE submitted 12 written exhibits. The individual submitted four written exhibits, which were (1) an evaluation by the individual's psychiatrist dated July 25, 2003; (2) an evaluation by the individual's psychologist dated July 21, 2003; (3) two sheets documenting his attendance at support group meetings in June and July 2003; and (4) a packet of five recent letters from fellow support group members affirming how long they have known the individual and describing the individual's active participation in the program. The Transcript taken at the hearing will be hereinafter cited as "Tr."

Legal Standards

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not a criminal matter, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. *See Personnel Security Hearing*, Case No. VSO-0078, 25 DOE ¶ 82,802 (1996). In the present case, we are dealing with a different standard designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once DOE Security has made a showing of derogatory information raising security concerns, the burden is on the individual to come forward at the hearing with evidence to convince the DOE that restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). This standard implies that there is a strong presumption against the granting or restoring of a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors.

After due deliberation, it is my determination that the individual's access authorization should not be restored. I am unable to conclude that restoration would not endanger the common defense and security, nor would it be clearly consistent with the national interest. 10 C.F.R. § 710.27(a), (d). The specific findings that I make in support of my conclusion are discussed below.

Findings of Fact

Except as noted below, the facts are not in dispute. The individual has been employed at a DOE facility since 1974. The clearance which he held was suspended in 2002. In recent periods he has sought treatment by a psychiatrist and a psychologist. They are helping him deal with his impulse control disorder.

His disorder has manifested itself in two ways. He has previously been a pathological gambler. However, he eventually wanted to stop, and with the help of a treatment program, has done so. The last time he gambled was October 19, 1999. Since that time until the present he attends Gamblers Anonymous meetings every week and is an active participant, a mentor to newcomers and an occasional group leader. Tr. p. 18, 21-22.

The other aspect of his impulse control disorder involves what he describes as recurring lust, or a sexual addiction. PSI p. 25. The symptoms of his disorder are entirely self-reported. The individual has been going for four to five years to massage parlors where he pays for sex with prostitutes. He is aware that these visits expose him to the dangers of sexually transmitted disease (PSI p. 21), blackmail (*id.*; Tr. p. 54) and even violence (Tr. p. 76). He also says he considers it "an immoral thing to do." PSI p. 21. He says he wants to stop, but says "I'm pretty much . . . like with gambling, addicted on it." In response to a question from the PSI investigator, "Do you think you're a sex addict?," the individual answered "Yes." PSI p. 25. He also stated ". . . I recognize and acknowledge my addiction" Individual's Letter to DOE Counsel dated April 23, 2003, p. 3; and he says in the same letter "I am an employee with an addiction problem." *Id.* p. 4.

The individual acknowledged that going to massage parlors was one of the things that contributed to his divorce, and to strained relations with one of his daughters. He has tried to stop, but simply could not.

The impulses are too strong. Typically these visits occur every two to three weeks on average. Report, p. 1. The longest he has refrained from visiting massage parlors is 90 days.

The individual claims he is no longer a security risk. He minimizes the risk of blackmail. He claims his going to massage parlors “is pretty open and I would say it’s hard to blackmail me on something like that now.” PSI p. 33. The individual maintains he has been in therapy and is successfully being treated for his impulse control disorder. He has submitted recent letters from his psychiatrist and his psychologist in support of his claim that he is rehabilitated.

The letter from his psychiatrist, generally positive in tone, says “[the individual] is not impulsive or reckless and his compulsion has diminished.” Nevertheless, the psychiatrist is in agreement with the DOE psychiatrist’s diagnosis, “312.30 Impulse Control Disorder.” Earlier in the letter he noted “However, he is divorced and has not established another long term sexual relationship.” He concludes the letter as follows: “Recommendation: I do not find any emotional instability that would cause [him] to have a significant defect in his judgment or reliability. He will predictably continue his rehabilitation effort and adherence to his psychiatric treatment plan.” July 25, 2003 Letter, p. 2. It is worth noting that the psychiatrist did not say the individual was rehabilitated, or that no more treatment was necessary.

The psychologist’s letter is brief (only one page). It is also favorable to the individual. In it the psychologist says “[the individual] has been making progress in treatment . . . He continues on-going treatment for his sexual addiction and is showing marked improvement.” July 21, 2003 Letter, p. 1. The psychologist refers to positive “factors such as the individual’s commitment and response to treatment, personal integrity, together with his expertise and experience . . .” *Id.* The psychologist did not address the central issue of the individual’s judgment and reliability. Nor does he say that continued treatment is unnecessary.

I advised the individual that he should have his psychiatrist and/or his psychologist attend and testify at the hearing. Telephone Memorandum dated May 27, 2003; Letter from Hearing Officer to Individual dated June 13, 2003; see also Telephone Memorandum dated July 16, 2003. For example, while the individual’s psychiatrist states that his impulse control disorder “has diminished,” he never explains by how much or how much further the individual has to go to achieve remission. Answers to these questions would have been helpful to my decision-making. The individual called neither of these medical professionals to be a witness. As a result, they were not available to explain further and defend their opinions under oath, nor were they made subject to cross-examination.

It is worth noting that the individual has not been involved in any negative way with law enforcement as a result of his sexual addiction. While obtaining the services of a prostitute in the individual's state is a misdemeanor, that fact is not cited in the Notification Letter. The DOE Security Office does not rely on this illegality as one of the risks on which the Notification Letter is based.

Finally, the individual argues in general terms that his mental condition "may have an effect on my personal life, but in no way has it affected my judgment and reliability regarding national security." Individual's Letter to DOE Counsel dated April 23, 2003, p. 2.

Testimony of the Witnesses at the Hearing

The Personnel Security Specialist

The DOE personnel security specialist testified that she is the person who made a recommendation that the individual be processed for administrative review. It was her view that because of the psychiatrist's Report, the individual's condition met the criteria of Section 710.8(h). She explained that an individual who meets the criteria may not be able to protect classified information. Tr. p. 36. She stated that a person who used poor judgment could endanger the common defense and security. Tr. p. 37.

The DOE Psychiatrist

At the hearing, the DOE consultant psychiatrist explained in detail the basis for the medical diagnosis in his Report. He indicated that he made a psychiatric evaluation of the individual, including taking his life and family history, doing a mental status examination, and then formulating a diagnosis. He testified that the diagnosis of Impulse Control Disorder Not Otherwise Specified (312.30) involves "a group of conditions . . . characterized by an individual's inability to control or mitigate his impulses. And included among them are, for example, pathological gambling." Tr. p. 44. The diagnosis can "cover other problems with impulses, such as sexual addiction." *Id.*

After hearing the individual's testimony at the hearing, the DOE consultant psychiatrist went on to affirm the current validity of his diagnosis. He stated that it was his professional opinion that the individual has "an illness or medical condition of a nature which causes or may cause a significant defect in his judgment or reliability." Tr. p. 49. He testified that as for pathological gambling, "to [the individual]'s credit, I believe he has addressed this issue and it is now in remission and no longer affects his judgment and reliability." *Id.* However, the individual's sexual addiction is "ongoing" and "still persists", and it "causes him to exercise deficits in judgment." Tr. p. 49-50. The condition "causes [him] to act, behave or make choices in a way that otherwise he would not absent the condition or illness." Tr. p. 50.

The DOE consultant psychiatrist stated that individuals with this disorder get themselves into situations where they do damage to themselves, physically and emotionally. Tr. p. 63. An individual with an impulse control disorder of this type is “prone to use poor judgment, not so much whether [or] not just in what they do in terms of responding to the symptom, but also in terms of responding to other situations in their lives, in their personal lives as well as in their occupation or professional endeavors.” *Id.*

The DOE consultant psychiatrist noted several mitigating factors, including the fact that the individual has been “very straightforward about his condition. He doesn’t deny it, he admits it, in other words he takes responsibility for his condition.” In addition, he is “address[ing] these issues [by] participating in treatment” by a psychiatrist and a psychologist. Tr. p. 51. The individual has also in the past participated in a support group for individuals with a sexual addiction. However, at the time of the psychiatrist’s examination, the individual was not attending a support group for sexual addicts.

In evaluating the question of whether the individual was rehabilitated from his Impulse Control Disorder, the DOE consultant psychiatrist testified that the model most widely used in the treatment of a sexual addiction was the one used in treating substance addiction. Tr. p. 68. As he had explained in his Report, p. 7, “the addiction model has been found useful in the treatment of compulsive sexual behavior.” In that addiction model “a state of remission is, number one, abstinence, and number two, a specified period of time, which is 12 months . . . those are the two main criteria that should be used in judging whether [the individual]’s condition is in remission.” Tr. p. 68-9. I asked him whether the program the individual is following with regard to his treatment is the right one. The witness said “Yes, he’s making very good progress.” Tr. p. 70. He stated he would not recommend a different treatment or a different level of treatment. I asked further if 180 days without an encounter in which he paid for sex would be sufficient in his view to conclude that remission had occurred. The DOE consultant psychiatrist said he would be “halfway there. . . And the reason that we use a period of 12 months, it’s not an arbitrary figure that we just throw in there, is because during a period of 12 months it is safe to assume that an individual has gone through major life cycle changes, anniversaries, day-to-day living situations, stressors that any individual would experience.” Tr. p. 71-72. His testimony was that the individual was not rehabilitated, because the individual has been abstinent at most for only 90 days.

The DOE consultant psychiatrist was asked about the two letters the individual submitted from his own psychiatrist and his psychologist. He stated that nothing in these letters caused him to alter any of his conclusions or the diagnosis that he reached regarding the individual. Tr. p. 51, 67. The DOE consultant psychiatrist was asked if the individual’s psychiatrist was saying, in effect, “the serious side of the condition is diminished.” He answered “this could very well be.” However, he continued “I still feel that we have not reached, or at least [the individual] has not shown that he has been clear of the manifestations for that specified period of 12 months.” Tr. p. 73.

The Individual

The individual addressed the question of whether he is susceptible to blackmail or coercion. He claimed he has told “everybody that needs to know” about his sexual addiction problem. Tr. p. 83. However, he later contradicted himself on this issue. He conceded if “somebody from my church” saw him “going in and out of a massage parlor it might cause a scandal.” He also recognized that “My management at work, as far as I know they don’t know” about the extent of his problem. *Id.*

In conclusion, he said with reference to his gambling addiction,

[O]ne really never overcomes the compulsion to gamble, we’re always compulsive gamblers and we’re constantly in recovery, and we go to meetings every week. It’s not like you can say after a year or five years that you’re cured of gambling. It’s a lifelong endeavor. . . . And if it did happen it could come back stronger than ever. And sometimes it might only take once.

Tr. p. 86-7.

The Individual’s Fellow Support Group Member

The individual called a member of a local chapter of his gambling support group (Gamblers Anonymous) to testify. This person has known the individual for 3½ years. He testified that the individual is an active participant in the group’s meetings, that “he has been very true to this program, . . . He helps other people who have problems . . . He’s there as a mentor for the young people coming into the program.” In conclusion, the witness noted “I think that if I needed somebody I would not hesitate a moment to call him . . . and I think that if it was in his power he would respond favorably to whatever I asked. Except lending me money to gamble.” Tr. p. 22.

Analysis

The individual raises two arguments to resolve the Criterion H security concerns. First, he contends that his judgment and reliability are not defective. Second, he believes that since he has started treatment, his addiction problem is now under control and he is rehabilitated. As discussed below, I cannot find that the security concerns raised in this proceeding have been mitigated.

A. Judgment and Reliability

The DOE has relied on the opinion of the consultant psychiatrist in invoking Criterion H. As he wrote in his Report, the condition causes or may cause a significant defect in the individual’s judgment and reliability.

It is true that the individual's psychiatrist has written a letter of recent date in which he says that the individual's "compulsion" has diminished. With the treatment the individual has obtained, his willingness to admit his problem and confront it, and his regular participation in a support group, the individual is certainly on a good path. But no one at the hearing or elsewhere has questioned the diagnosis of Impulse Control Disorder Not Otherwise Specified. In fact, the individual's own psychiatrist agrees with the DOE consultant psychiatrist's diagnosis. Nor did the individual's psychologist disagree with the diagnosis. The DOE consultant psychiatrist's testimony remains uncontroverted: the individual has an illness or medical condition of a nature which causes or may cause a significant defect in his judgment reliability. Tr. p. 49.

As the personnel security specialist noted, an individual who meets Criterion H - i.e. has a significant defect in judgment and reliability - may not be able to protect classified information. A person whose judgment is impaired by the disorder could easily endanger the common defense and security by being susceptible to blackmail or coercion. While there is some evidence that blackmail or coercion of the individual is unlikely, because he has been relatively open about his problem, that does not resolve the issue for me. He has not been completely open. Tr. p. 83. Moreover, circumstances are always subject to change, and in the future he may decide to hide his disorder. *Personnel Security Hearing*, Case No. VSO-0084, 26 DOE ¶82,574 (1996)(*affirmed* by OSA, 1966)(voyeurism and exhibitionism remain viable future security concerns even when the person did not hide the facts surrounding his sexual problems).

B. Rehabilitation

Much of the evidence introduced at the hearing indicated that the individual has made definite progress in the treatment of his gambling addiction and some progress in the treatment of his sexual addiction. In fact, with continuing care and treatment he has kept the gambling addiction under control for the last 3½ years. However, his sexual addiction is different. It is quite clear to me that the individual still has the disorder - his sexual addiction - as that condition is defined in the DSM-IV TR. He is currently symptomatic. The individual himself explained it quite clearly. In his very opening statement at the hearing, he said " . . my sex addiction continues. This has been the toughest addiction for me to stop." Tr. p. 12-13. The DOE consultant psychiatrist also continues to believe the individual's judgment and reliability are impaired.

It is true that the individual has made commendable progress in dealing with his disorder. The fact that he is in control of his pathological addiction to gambling is significant. The letters and testimony of his fellow support group members were in my view sincere and telling. They confirm the individual's dedication and strength of character. The fact that he has already conquered one addiction is evidence that he may well be able to conquer this one. As affirmed by his psychologist, the individual deserves credit for making so much headway in treatment. Beginning in June 2003, he has begun attending another support group, and now says that he has "found a program that I can live with, Sex and Love Addicts Anonymous, SLAA." Tr. p. 12. He has been a regular attendee since June 2003.

Nevertheless, I find the individual is not rehabilitated. The DOE consulting psychiatrist stated persuasively that the individual still suffers from an Impulse Control Disorder.

[H]e continues to engage in sexual addiction on a periodic basis. This condition obviously has affected his judgment and reliability. . . he is still exposed to adverse medical complications. He is also vulnerable to being further embarrassed and even blackmailed by his activities. . . . He has alienated his younger daughter and this has contributed to his separation and impending divorce. Additionally, he himself mentioned that he has become isolated from others. His work performance has been affected. Yet, he has continued to succumb to his impulses.

Report p. 8. This describes an individual enthralled by his addiction to the extent that he jeopardizes his own health, his family relationships as well as those in the larger community, and his job. This is serious indeed and is not the image of a person free from the influence of his impulse control disorder.

On the rehabilitation issue, I find the evaluation by the DOE consulting psychiatrist substantially more credible than the limited evaluations of the individual in the letters written by the other two medical professionals. The DOE psychiatrist's evaluation, report and testimony at the hearing were all much more detailed and persuasive on how far exactly the individual has still to go in treatment than anything submitted by the individual or his medical professionals. I believe the DOE consultant psychiatrist has accurately summarized the individual's condition. He is still in treatment for the Impulse Control Disorder Not Otherwise Specified, and he will remain that way until he can achieve the kind of remission that is identified in the addiction model. *Personnel Security Hearing*, Case No. TSO-0021 (June 26, 2003). The individual's own medical professionals do not disagree. While praiseworthy, his attendance at SLAA support group meetings has been only for a relatively short period. Moreover, the longest the individual has abstained from visiting a massage parlor and paying for sex was three months, which is well short of the 12 months required. He therefore still has the symptoms of a mental illness. *Personnel Security Hearing*, Case No. VSO-0318, 27 DOE ¶82,848 (2000), slip op. at 11 (testimony cited with approval that two to three year period of abstinence is necessary for rehabilitation from sexual obsession); see also *Personnel Security Hearing*, Case No. VSO-0034, 25 DOE ¶82,768 (1995).

Conclusion

As explained in this Decision, I find that DOE Security properly invoked 10 C.F.R. §710.8(h) in suspending the individual's access authorization. While the individual has made progress in addressing his disorder, for the reasons I have described above I find that the individual is not rehabilitated and has therefore failed to mitigate DOE's legitimate security concerns. Thus, I am unable to find that restoring the individual's access authorization would not endanger the common defense and security and would be clearly consistent with the national interest.

Accordingly, it is my decision that the individual's access authorization should not be restored. The individual may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. §710.28.

George B. Breznay
Hearing Officer
Office of Hearings and Appeals

Date: October 10, 2003